IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2608 OF 2006.

Madhukar Tikaram Kulthe ..Applicant.
v/s
The State of Maharashtra & Anr. ..Respondent.

Mr. P.M. Pradhan for the Applicant.

Mrs. M.H. Mhatre, A.P.P. for the State.

Shri Raja Thakare with Mr. A.R. Chimbalkar for CBI-Respondent No.2.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 4TH OCTOBER, 2006.

P.C.

. This is an application by accused No. 22 in C.R. No. 135/2002 registered at Bund Garden Police station, Pune. The Offences alleged are forgery, cheating punishable under Indian Penal Code and under Bombay stamp Act so also various sub-sections of section 3 of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter for short referred to as MCOC Act).

2. Mr. Pradhan, learned counsel appearing for the applicant, does not dispute that the applicant had applied for being released on bail but the said

application was not pressed on merits and all that was sought was temporary bail on medical grounds for undergoing eye surgery. That application was disposed of by this court and the surgery was performed thereafter.

3. However, Mr. Pradhan submits that this does not prevent the applicant from praying for being enlarged on bail on merits on subsequent occasion. According to him the applicant is a retired Clerk from the India Security Press, Nasik. After retirement he has commenced business of supply of papers which is utilised for printing of Court Fees and other stamps. He has filled in tenders and obtained several contracts in the name of his firm "M/s Indian Trading Corporation". The petitioner is a supplier of paper. The petitioner obtains the paper as ordered by his customers from manufacturers and for which he was being paid commission.. His legitimate business activities cannot be termed as unlawful and by mere supply of such papers it cannot be said that the applicant is a member of organised crime syndicate of A.K.L. Telgi (Accused No.23). He submits that as far as the offences alleged against the applicant are concerned, there are no

details and particulars even at this prima facie stage to indicate that a legitimate business activity of the applicant in setting up a Corporation and thereafter supplying paper can be said to be a continuing unlawful activity and further the said activity is with the object of gaining any advantage or benefit contemplated by section 2(1)(e) so as to term the same as "Organised Crime". He submits that the definition contemplates continuity of Transaction or Activities. A single transaction cannot be said to be a continuing unlawful activity. Thus, assuming for the sake of argument that the allegations do make out a prima facie case, yet, a solitary and isolated act of supply of raw materials cannot be said to be falling within the definition of the term "Organised Crime". On this ground alone the applicant is entitled to be enlarged on bail.

4. Second submission of Shri Pradhan is that the approval granted in this case is wholly vitiated in as much as a approval contemplated under section 23 (1) (a) of the Act is to be granted by a Police Officer not below the rank of DIG of Police and it must be qua each accused, There cannot be a general approval in so far as the case is concerned. He submits that the approval is

contrary to section 23(1)(a) of the MCOC Act. That apart, the authority granting the approval is one Mr. Jaiswal, who was put in charge of the investigations in this case. This very authority/officer has granted approval and therefore, it cannot be said that the same is in accordance with the principles of fairness, equity and justice so also in time with the provisions of MCOC Act. For all these reasons, the application be allowed. Shri Pradhan invites my attention to portions of the charge-sheet wherein the role attributed to the applicant is set out.

5. Shri Thakare appearing for the respondents on the other hand, submits that assuming without admitting that this bail application is maintainable when the first application was not pressed on merit, still, there is enough material at this prima facie stage to indicate that the applicant is guilty of an offence punishable under MCOC Act. Once he is so guilty then sub-section (4) of Section 21 and more particularly sub-clause (b) thereof would apply and this application be rejected. He has invited my attention to the affidavit filed in reply to this application by Vinayak Apte and more particularly paras 2 and 3 thereof. On the basis of

this, he submits that the present application be dismissed.

6. I have considered the rival contentions. The present application being under section 21(4) of MCOC Act and the mandate thereof not being disputed the same is scrutinised and dealt with accordingly.

7. It is not possible to accept the contention of Shri Pradhan that the applicant is not guilty of any offences under MCOC Act as more particularly alleged in the charge-sheet. The same has extensively pointed out that therein. The continuing unlawful activities of the Organised Crime Syndicate include procuring of various raw materials i.e. paper, chemicals required for gumming, ink, papers from various manufacturing units who are the suppliers within the country. The applicant who was the ex-employee of India Security Press had during the course of his employment dealt with certain suppliers and therefore, after retirement the Organised Crime Syndicate involved him in the act of procuring the said materials. It has been pointed out that the firm opened by the applicant at Nasik was Front Firm of A.K.L. Telgi. This front firm had no other customer

except A.K.L. Telgi. The applicant procured papers of specification identical to those used by India Security Press and supplied the same to Telgi for the purpose of printing counterfeit Government Stamps and Stamp Papers. This activity commenced from September, 1998 and went on till 2002. The manner in which this activity commenced and was continuing has been set out in para 3 of the affidavit of the CBI. The statement on affidavit is based upon the materials collected during the course of investigation. It is not possible to agree with shri Pradhan at this prima facie stage that the act of the applicant is a single, solitary or isolated act. It appears that about 19,670 tonnes of gum papers with matching specification of ISP were obtained by the Applicant. Similarly he placed order for supply of 8278 tonnes of papers to one Gandhi Industries and received 6360 tonnes pursuant thereto. It was supplied to the prime accused. The record reveals the transaction entered into and the payment received.

8. It is in such circumstances that prima facie case of the petitioner being guilty of "Organised Crime" is made out. At this stage, it is not permissible to undertake a detailed scrutiny and examination of the

materials. I cannot hold a mini trial at this stage. Suffice it to state that the charge sheet sets out the specific role of the applicant in the continuing unlawful activities of the Organised Crime Syndicate and the statements in the charge-sheet are based upon the materials collected and referred to above.

9. In the above circumstances, it is not possible to agree with Shri Pradhan that the applicant is not guilty of the offences alleged against him. It is for the applicant to establish at an appropriate stage that the materials which have been collected do not make out any offence, as far as he is concerned.

10. As far as the approval granted in this case is concerned, at this stage, it would not be proper to go into the submission of Shri Pradhan. Moreso, when I find that strong prima facie case is made out against the applicant. Once I am not inclined to grant bail on merits then as to whether the approval is vitiated or not need not be considered. That issue is kept open to be dealt with at an appropriate stage.

11. With the above observations the bail application

is dismissed.

(S.C.DHARMADHIKARI, J.)